

Montana Title Loan Act

31-1-801. Short title. This part may be cited as the "Montana Title Loan Act".

History: En. Sec. 1, Ch. 455, L. 2001.

31-1-802. Purpose -- rules -- scope -- fees. (1) The purpose of this part is to protect consumers who enter into short-term, high-rate loans with lenders from abuses that occur in the credit marketplace when the lenders are unregulated.

(2) The department may adopt rules to implement the provisions of this part. The rules may include but are not limited to rules establishing forms and procedures for licensing, rules pertaining to acceptable practices at a business location, rules establishing disclosure requirements, and rules establishing complaint and hearing procedures.

(3) This part does not apply to pawnbrokers.

(4) This part may not be construed as affecting in any way the method of perfecting security interests on personal property provided for elsewhere in law.

(5) Fees collected under this part must be deposited in an account in the state special revenue fund to be used by the department in carrying out its supervisory functions under this part.

History: En. Sec. 2, Ch. 455, L. 2001; amd. Sec. 1, Ch. 178, L. 2003; amd. Sec. 9, Ch. 163, L. 2005.

31-1-803. Definitions. For the purposes of this part, the following definitions apply:

(1) "Borrower" means the owner of any titled personal property who pledges the property to a title lender pursuant to a title loan agreement.

(2) "Capital assets" means the assets of a person less the liabilities of that person. Assets and liabilities must be measured according to generally accepted accounting principles.

(3) "Certificate of title" means a state-issued certificate of title or certificate of ownership for personal property deposited with a title lender as security for a title loan pursuant to a title loan agreement.

(4) "Department" means the department of administration provided for in [2-15-1001](#).

(5) "Person" means an individual, corporation, partnership, limited partnership, limited liability company, limited liability partnership, association, or other entity.

(6) "Pledged property" means personal property the ownership of which is evidenced and delineated by a state-issued certificate of title.

(7) "Title lender" means a person who has qualified to engage in the business of making title loans pursuant to this part and maintains at least one title loan office in this state.

(8) "Title loan" means a loan secured by an unencumbered state-issued certificate of title or certificate of ownership to personal property, with an original term of 30 days.

(9) "Title loan agreement" means a written agreement between a borrower and a title lender in a form that complies with the requirements of this part.

(10) "Title loan office" means the location or premises where a title lender regularly conducts business.

(11) "Titled personal property" means any personal property the ownership of which is evidenced and delineated by a state-issued certificate of title.

History: En. Sec. 3, Ch. 455, L. 2001; amd. Sec. 221(1), Ch. 483, L. 2001; amd. Sec. 2, Ch. 178, L. 2003.

31-1-804. Licensure of title lenders . (1) It is unlawful for any person to act as a title lender unless the person has first been licensed by the department.

(2) (a) All title loan agreements entered into by a person who acts in violation of the license requirements of this part and all title pledges accepted by the person are void.

(b) Any borrower who enters into a title loan agreement with a person who acts in violation of the provisions of this part may not be bound by the terms of the title loan agreement, and the borrower's only liability is for the return of the principal sum borrowed plus interest at the rate set by statute for interest on judgments.

History: En. Sec. 4, Ch. 455, L. 2001.

31-1-805. Qualifications for licensure. (1) To be eligible for licensure as a title lender, an applicant must be a natural person residing in this state, a business entity formed under the laws of this state, or a foreign business entity qualified to conduct business in this state.

(2) (a) The application for licensure must be in writing, under oath, and in the form prescribed by the department.

(b) The application must contain:

(i) the name of the applicant;

(ii) the date of formation if a business entity;

(iii) the physical address of each title loan office to be operated;

(iv) the name and resident address of the owner or partners or, if a corporation or association, of the directors, trustees, and principal officers; and

(v) any other pertinent information that the department may require.

(3) The department may not issue or renew a license if findings are made that the criminal history of any employees of the applicant at the time of application demonstrates any convictions involving fraud or financial dishonesty or if the findings show civil judgments involving fraudulent or dishonest financial dealings.

(4) An applicant for licensure shall pay an application fee of \$500, unless less than 6 months remain in the calendar year, in which case the fee is \$250, and an annual license renewal fee of \$500 for each title loan office that the applicant intends to operate or operates in this state.

(5) (a) Each license must specify the location of the specific title loan office to which it applies and must be conspicuously displayed in the title loan office.

(b) Before any title loan office location may be changed or moved by the title lender, the department shall approve the change of location by endorsing the license for that title loan office or mailing the licensee a new license for that title loan office without charge.

(6) (a) Upon the filing of the application and the payment of the fee by a person eligible to apply for a title lender's license, the department shall issue a license to the applicant to engage in the title loan business in accordance with the provisions of this part for a period that expires on the last day of December following the date of its issuance.

(b) Each license must be uniquely numbered and may not be transferred or assigned. Renewal licenses are effective for a period of 1 year.

(7) Each licensee shall post a bond in the amount of \$10,000 for each location. The bond must continue in effect for 2 years after the licensee ceases operation in this state. The bond must be available to pay damages and penalties to consumers harmed by a violation of this part.

(8) More than one place of business may not be maintained under the same license, but the department may issue more than one license to the same licensee if the licensee is otherwise qualified.

History: En. Sec. 5, Ch. 455, L. 2001; amd. Sec. 1, Ch. 120, L. 2005.

31-1-806 through 31-1-809 reserved.

31-1-810. Examinations -- fees. (1) The department may conduct an examination of a licensee's title lending operation at any time to ensure that the licensee is in compliance with the provisions of this part.

(2) A licensee shall pay the department a fee in the amount of \$300 a day for each examiner required to conduct an annual examination.

(3) A licensee shall make available to a department examiner the information required under [31-1-815](#) or as required by rule.

(4) Completion of an annual examination must, in the absence of the department's finding of just cause to revoke or suspend a license, constitute grounds for license renewal.

History: En. Sec. 6, Ch. 455, L. 2001.

31-1-811. License revocation or suspension -- penalty. (1) If the department finds, after notice and hearing or opportunity for hearing, as provided in the Montana Administrative Procedure Act, that any person, licensee, or officer, agent, employee, or representative of the licensee has violated any of the provisions of this part, has failed to comply with the rules, regulations, instructions, or orders promulgated by the department, has failed or refused to make required reports to the department, or has furnished false information to the department, the department may impose a civil penalty not to exceed \$1,000 for each violation and may issue an order revoking or suspending the right of the person or licensee, directly or through an officer, agent, employee, or representative, to do business in this state as a licensee.

(2) A revocation, suspension, or surrender of a license does not relieve the licensee from civil or criminal liability for acts committed prior to the revocation, suspension, or surrender of the license.

History: En. Sec. 7, Ch. 455, L. 2001; amd. Sec. 3, Ch. 178, L. 2003.

31-1-812. Complaint procedure. The department shall maintain a list of licensees that is available to interested persons and to the general public. The department shall also establish by rule a procedure under which an aggrieved consumer or any member of the

public may file a complaint against a licensee or an unlicensed person who violates any provision of this part. The department may hold hearings, make findings of fact or conclusions of law, issue cease and desist orders, refer the matter to the appropriate law enforcement agency for prosecution for a violation of this part, seek injunctive or other relief in district court, or revoke or suspend a license granted under this part.

History: En. Sec. 8, Ch. 455, L. 2001.

31-1-813 through 31-1-814 reserved.

31-1-815. Information and annual reports. (1) Each licensee shall keep books, accounts, and records that will enable the department to determine if the licensee is complying with the provisions of this part and shall maintain any other records required by the department. The department is authorized to examine the records at any reasonable time. The records must be kept for 2 years following the last entry on a title loan and must be kept according to generally accepted accounting procedures that include an examiner being able to review the recordkeeping and reconcile each title loan with documentation maintained in the borrower's loan file records.

(2) Each licensee shall file, on forms prescribed by the department, an annual report with the department on or before March 31 for the 12-month period in the preceding year ending as of December 31. The report must disclose in detail and under appropriate headings:

(a) the resources, assets, and liabilities of the licensee at the beginning and the end of the period;

(b) the income, expense, gain, loss, and balance sheets;

(c) the total number of title loans made in the year ending as of December 31 of the previous year;

(d) the total number of title loans outstanding as of December 31 of the previous year; and

(e) verification that the licensee has not used a criminal process or caused a criminal process to be used in the collection of any title loans or used any civil process to collect the payment of title loans not available to title lenders under this part.

(3) A report must be verified by the oath or affirmation of the owner, manager, or president of the title lender.

(4) (a) If a licensee conducts another business or is affiliated with other licensees under this part or if any other situation exists under which allocations of expense are necessary, the licensee shall make the allocation according to appropriate and reasonable accounting principles as approved by the department.

(b) Information about any other business conducted on the same premises where title loans are made must be provided as required by the department.

(5) Each licensee shall file a copy of the disclosure pamphlets described in [31-1-819](#) with the department prior to the date of commencement of business at each location, at the time that any changes are made to the pamphlets, and annually upon renewal of the license. These pamphlets must be available to interested parties and to the general public through the department.

History: En. Sec. 9, Ch. 455, L. 2001.

31-1-816. Title loan requirements -- liability of borrower -- right of rescission --

arbitration. (1) Any licensed title lender may engage in the business of making loans secured by a certificate of title subject to the provisions of this part.

(2) Every title loan must be reduced to writing in a title loan agreement. Each title loan agreement must provide that:

(a) the title lender agrees to make a loan of money to the borrower and that the borrower agrees to give the title lender a security interest in unencumbered titled personal property owned by the borrower;

(b) the borrower consents to the title lender keeping possession of the certificate of title;

(c) (i) the borrower has the exclusive right to redeem the certificate of title by repaying the loan of money in full and by complying with the title loan agreement for an agreed period of time;

(ii) the borrower may rescind the transaction if, by 5 p.m. of the title lender's first business day following the day that the loan was executed, the borrower provides the title lender with cash or certified funds equaling 100% of the amount loaned to the borrower. A title lender may not charge a borrower any fee or interest if the borrower rescinds the loan as provided in this subsection (2)(c)(ii). Except as provided in this subsection (2)(c)(ii), a borrower does not have a right to rescind the loan unless the title lender agrees to the rescission.

(d) (i) the title lender may renew the title loan for additional 30-day periods beyond the original term provided that beginning with the sixth extension or continuation, and for each subsequent extension or continuation, the borrower must reduce the principal amount by at least 10% of the original principal amount of the loan; and

(ii) if the borrower fails to reduce the principal amount as required by subsection (2)(d)(i), the title lender may at its option:

(A) declare outstanding principal and any finance charges due and payable; or

(B) solely for the purpose of calculating the finance charge, reduce the amount of the principal balance by 10%, with the understanding that that portion of the principal is still owed by the borrower but that portion of the loan may not accrue interest or finance charges after that date;

(e) when the certificate of title is redeemed, the title lender shall release its security interest in the titled personal property and return the personal property certificate of title to the borrower;

(f) (i) upon failure of the borrower to redeem the certificate of title at the end of the original 30-day agreement period or at the end of any agreed-upon 30-day renewal or subsequent renewals, the borrower shall deliver the titled personal property to the title lender at the location specified in the title loan agreement; and

(ii) the borrower shall deliver the titled personal property to the title lender in substantially the same condition that it was in at the time that the borrower entered into the loan, minus normal wear and tear;

(g) if the borrower fails to deliver the titled personal property to the title lender, the title lender must be allowed to take possession of the titled personal property;

(h) upon obtaining possession of the titled personal property, the title lender is

authorized to sell the titled personal property and to convey to the buyer good title, subject to the waiting periods provided for in [31-1-820](#); and

(i) a borrower who does not redeem a pledged certificate of title is not personally liable to the title lender to repay principal, interest, or expenses incurred in connection with the title loan and that the title lender shall look solely to the titled personal property for satisfaction of the amounts owed under the title loan agreement.

(3) The security interest provided for in subsection (2)(a) is not perfected unless it is filed in accordance with [61-3-103](#).

(4) Any borrower who obtains a title loan from a title lender under false pretenses by hiding or not disclosing the existence of a valid prior lien or security interest affecting the titled personal property is personally liable to the title lender for the full amount stated in the title loan agreement, including interest and expenses incurred by the title lender in connection with the loan.

(5) (a) A loan agreement may not contain a mandatory arbitration clause that is oppressive, unconscionable, unfair, or in substantial derogation of a borrower's rights.

(b) A mandatory arbitration clause that complies with the applicable standards of the American arbitration association must be presumed to not violate the provisions of subsection (5)(a).

History: En. Sec. 10, Ch. 455, L. 2001; amd. Sec. 39, Ch. 477, L. 2003; amd. Sec. 3, Ch. 210, L. 2005.

31-1-817. Interest rates -- fees charged. (1) The maximum rate of interest that a title lender shall contract for and must receive for making and carrying any title loan authorized by this part may not exceed:

(a) 25% for each 30-day period for the portion of a loan that does not exceed \$2,000;

(b) 18% for each 30-day period for the portion of a loan exceeding \$2,000 but not exceeding \$4,000; and

(c) a 10% percentage rate for each 30-day period, plus fees, on the portion of a loan that exceeds \$4,000.

(2) Title lenders may charge their actual costs of recording liens on borrowers' certificates of title.

(3) Title lenders may charge a service charge, as provided in [27-1-717](#), if there are insufficient funds to pay a check on the date of presentment. Title lenders may not collect damages under [27-1-717](#)(3) based upon the presentment of an insufficient funds check.

History: En. Sec. 11, Ch. 455, L. 2001; amd. Sec. 4, Ch. 178, L. 2003.

31-1-818. Title loan agreements -- required disclosures. Each title loan agreement must disclose the following:

(1) all disclosures required to be made under the federal Truth in Lending Act;

(2) that the transaction is a loan secured by the pledge of titled personal property;

(3) the identity of the parties to the title loan agreement, including the name, business address, telephone number, and certificate number of the title lender and the name, resident address, and identification of the borrower;

(4) the monthly interest rate to be charged;

(5) the allowable fees and expenses to be charged to the borrower upon redemption of

the certificate of title;

(6) the date on which the borrower's exclusive right to redeem the pledged certificate of title pursuant to [31-1-820](#) expires;

(7) the location where the titled personal property is to be delivered if the certificate of title is not redeemed and the hours that the location is open for receiving deliveries;

(8) that if the titled personal property is sold by the title lender, any proceeds of the sale in excess of the amount owed on the loan and the reasonable costs of repossession must be paid to the borrower;

(9) that any attempt by a borrower to obtain a replacement certificate of title on a motor vehicle during the active term of a loan under this part may be a violation of [61-3-204](#) and may be subject to the penalty provisions of [61-3-601](#); and

(10) any additional disclosures considered necessary by the department.

History: En. Sec. 12, Ch. 455, L. 2001.

31-1-819. Required disclosure pamphlet. Before entering into a title loan agreement, the licensee shall deliver to the consumer a pamphlet prepared by or at the direction of the department that:

(1) explains, in simple language, all of the consumer's rights and responsibilities in a title loan transaction;

(2) includes a telephone number to the department's office that handles concerns or complaints by consumers;

(3) informs consumers that the department's office can provide information about whether a lender is licensed and other legally available information; and

(4) in a manner that is more conspicuous than the other information provided in the pamphlet and that is in at least 14-point bold typeface, furnishes a statement that "you cannot be prosecuted in criminal court for collection of this loan".

History: En. Sec. 13, Ch. 455, L. 2001.

31-1-820. Redemption of certificate of title -- failure to take possession. (1) (a) Except as otherwise provided in this part, the borrower is entitled to redeem the certificate of title upon timely satisfaction of all outstanding obligations agreed to in the title loan agreement.

(b) Upon expiration or default of a title loan agreement and of the renewal or renewals of the title loan agreement, if any, the title lender shall give written notification to the borrower of the borrower's right to redeem the certificate of title and shall retain possession of the certificate of title for at least 20 days after providing the notification.

(c) If the borrower fails to redeem the certificate of title before the lapse of the 20-day holding period, the borrower shall forfeit all right, title, and interest in and to the titled personal property to the title lender, who acquires an absolute right of title to the titled personal property. The title lender may sell or dispose of the pledged property.

(2) The title lender has, upon default by the borrower of any obligation pursuant to the title loan agreement, the right to take possession of the titled personal property.

(3) In taking possession, the title lender or the title lender's agent may proceed without judicial process if this can be done without breach of the peace or, if necessary, may

proceed by judicial process.

(4) If the title lender takes possession of the titled personal property, either personally or through its agent, at any time during the 20-day holding period provided in subsection (1), the title lender shall retain possession, either personally or through its agent, of the titled personal property until the expiration of the 20-day holding period.

(5) If during the 20-day holding period the borrower redeems the certificate of title by paying all outstanding principal, interest, and other fees stated in the title loan agreement and, if applicable, repossession fees and storage fees, the borrower must be given possession of the certificate of title and the titled personal property without further charge.

History: En. Sec. 14, Ch. 455, L. 2001.

31-1-821. Records of title loan agreements. (1) Each title lender shall keep a consecutively numbered record of each title loan agreement executed. In addition to a copy of the title loan agreement, the record must include the following:

(a) a clear and accurate description of the titled personal property, including its vehicle identification or serial number, license plate number, year, make, model, type, and color, if applicable;

(b) the date of the title loan agreement;

(c) the amount of the loan made pursuant to the title loan agreement;

(d) the date of maturity of the loan; and

(e) the name, social security number, resident address, and type and an identification number of a photo identification of the borrower and whether the borrower is over 18 years of age.

(2) The title lender shall make a good and usable photocopy of the photo identification of the borrower or shall take an instant photograph of the borrower, which photocopy or photograph must be attached to the title lender's copy of the title loan agreement.

(3) The borrower and the title lender or the title lender's employee or agent shall sign the title loan agreement, and the borrower must be provided with a copy at the time of signing.

(4) (a) The title lender shall keep the numbered record and a copy of a title loan agreement for a period of not less than 2 years from the date of the closing of the last transaction reflected in the record. The date of the last transaction, as used in this subsection, means, in the case in which a borrower redeemed the pledged certificate of title, the date of the redemption and, in the case in which a borrower does not redeem the pledged certificate of title, the date on which the title lender sells the titled personal property.

(b) A title lender who ceases engaging in the business of making title loans shall keep all records in the title lender's possession for a period of not less than 2 years from the date on which the title lender ceased engaging in the business.

(5) The records required to be maintained by this section must be made available for inspection by any employee of the department upon request during ordinary business hours without warrant or court order.

History: En. Sec. 15, Ch. 455, L. 2001.

31-1-822. Safekeeping of certificates of title -- liability insurance -- liability. (1) A person engaged in the business of title lending shall provide a safe place for the keeping of the pledged certificates of title and for the keeping of pledged property delivered to the title lender pursuant to the terms of any title loan agreement.

(2) A person engaged in the business of title lending shall maintain premises liability insurance in an amount of not less than \$100,000 for each occurrence for the benefit of consumers and employees who visit or work at the title lending office.

(3) A person engaged in the business of title lending is immune from liability for any loss or injury occasioned or caused by the use of pledged property unless the pledged property is actually in the possession of the title lender.

(4) A person engaged in the business of title lending is strictly liable to the borrower for any loss to pledged property in the possession of the title lender but only if the borrower makes a redemption of the pledged property prior to the expiration of the 20-day holding period provided in [31-1-820](#).

History: En. Sec. 16, Ch. 455, L. 2001.

31-1-823 through 31-1-824 reserved.

31-1-825. Prohibited acts. (1) A title lender may not:

- (a) accept a pledge from a person under 18 years of age;
- (b) make any title loan agreement giving the title lender any recourse against the borrower other than the rights granted title lenders under this part;
- (c) accept any waiver, in writing or otherwise, of any right or protection accorded a borrower pursuant to this part;
- (d) fail to exercise reasonable care to protect from loss or damage certificates of title or titled personal property in the physical possession of the title lender;
- (e) purchase titled personal property for personal use that was repossessed from the borrower by the title lender;
- (f) enter into a title loan agreement unless the borrower presents clear title to the titled personal property at the time that the loan is made and the title is retained in the physical possession of the title lender;
- (g) hold a title for more than 30 calendar days without perfecting the title lender's security interest;
- (h) threaten to use or use a criminal process in this or any other state to collect on the loan made to a consumer in this state or any civil process to collect the payment of titled loans not available to title lenders under this part;
- (i) use any device or title loan agreement that would have the effect of charging or collecting more fees, charges, or interest than those allowed by this part;
- (j) engage in unfair, deceptive, or fraudulent practices in the making or collection of a title loan;
- (k) knowingly violate any provision of or rule promulgated pursuant to this part; or
- (l) include any of the following provisions in the title loan agreement:
 - (i) a hold harmless clause, provided that a title lender is not liable to the borrower or a third party for injuries to or damages sustained by the borrower or a third party as the result of an accident involving personal property to which the title lender holds the

certificate of title;

(ii) a confession of judgment clause;

(iii) any assignment of or order for payment of wages or other compensation for services;

(iv) a provision in which the consumer agrees not to assert any claim or defense arising out of the contract; or

(v) a waiver of any provision of this part.

(2) If a title lender enters into a transaction contrary to this section, any lien or security interest obtained by the title lender is void.

History: En. Sec. 17, Ch. 455, L. 2001; amd. Sec. 5, Ch. 178, L. 2003.

31-1-826. Civil remedies. (1) The remedies provided in this section are cumulative and apply to licensees and unlicensed persons to whom this part applies.

(2) Any intentional violation of this part constitutes an unfair or deceptive trade practice.

(3) A person found to have intentionally violated this part is liable to the consumer for actual and consequential damages, plus statutory damages of \$1,000 for each violation, plus costs and attorney fees.

(4) A consumer may sue for injunctive and other appropriate equitable relief to stop a person from violating any provisions of this part.

(5) The consumer may bring a class action suit to enforce this part.

(6) The remedies provided in this section are not intended to be the exclusive remedies available to a consumer for a violation of this part.

History: En. Sec. 18, Ch. 455, L. 2001; amd. Sec. 6, Ch. 178, L. 2003.

31-1-827. Criminal penalties. A person, including a member, officer, or director of a title lender, who knowingly violates this part is guilty of a misdemeanor and, on conviction, is subject to a fine in an amount not exceeding \$1,000 or imprisonment not exceeding 6 months, or both.

History: En. Sec. 19, Ch. 455, L. 2001.